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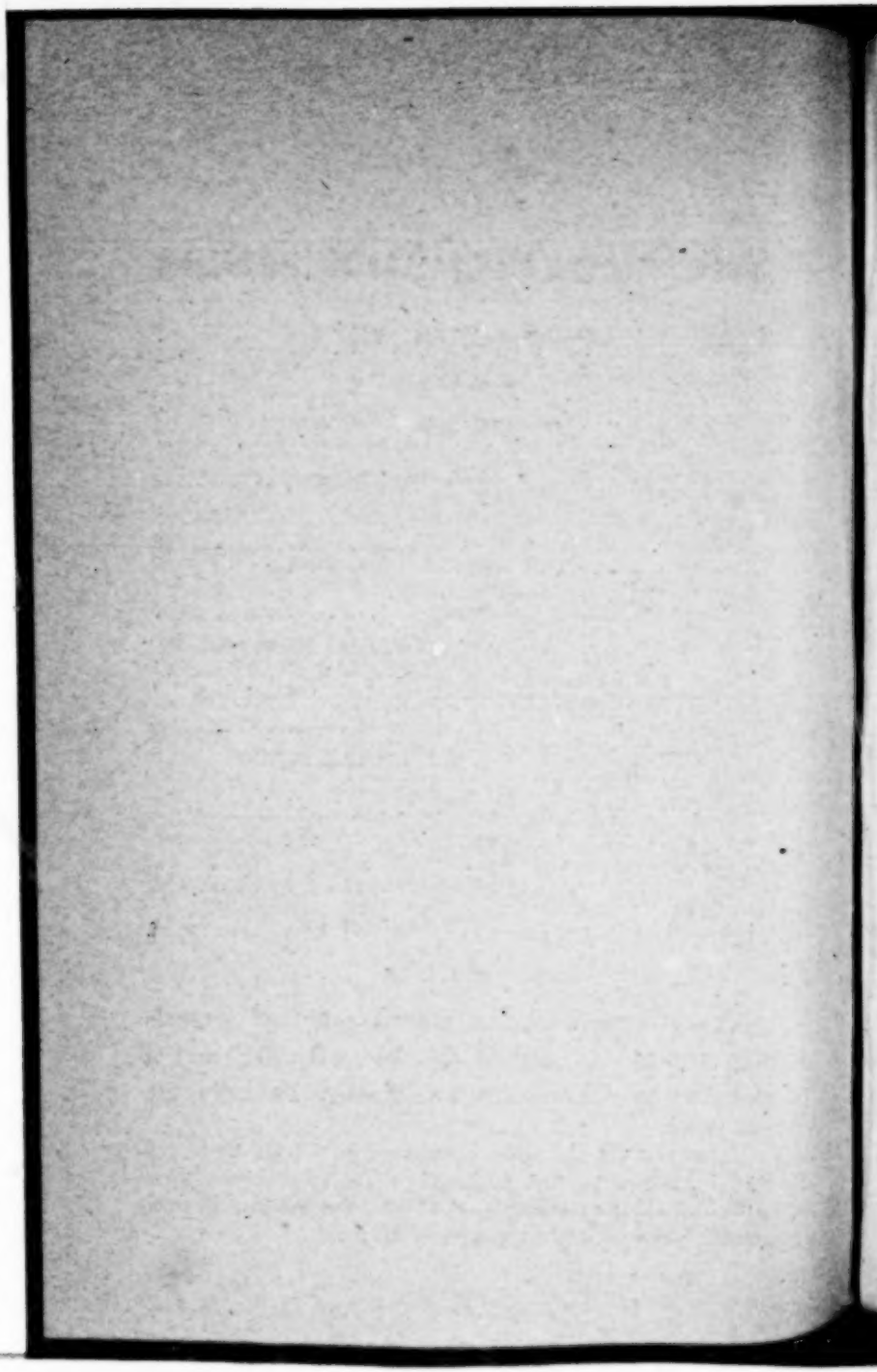

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 980

DEWEY HENRY WOMBLE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINION BELOW

The opinion of the circuit court of appeals (R. 67–69, 72)[1] is reported at 146 F. 2d 263.

JURISDICTION

The judgment of the circuit court of appeals was entered December 22, 1944 (R. 70), and a petition for rehearing was denied January 20,

[1] That part of the opinion appearing on page 68 of the record has been printed incorrectly. The page should begin with line 14, "leen Womble * * *", and the first 13 lines should follow after the last line on the page.

1945 (R. 71). The petition for a writ of certiorari was filed February 24, 1945, and a supplement to the petition was filed March 19, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether there was sufficient evidence from which the trial judge, sitting without a jury, could find that petitioner assisted in transporting a woman in interstate commerce for the purpose of prostitution.

STATUTE INVOLVED

Section 2 of the Act of June 25, 1910, c. 395, 36 Stat. 825, 18 U. S. C. 398, known as the Mann Act, provides in part:

> That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any

other immoral practice; * * * shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.

STATEMENT

On April 10, 1944, petitioner was indicted in the District Court for the Northern District of California for violation of the Mann Act, in that on July 10, 1943, he transported, caused to be transported, and assisted in transporting Dewell Kathleen Womble in interstate commerce from Louisville, Kentucky, to Stockton, California, for the purpose of having her practice prostitution (R. 2–3). After a trial by the court without a jury (R. 5), petitioner was convicted and sentenced to imprisonment for a term of five years (R. 7–8). On appeal to the Circuit Court of Appeals for the Ninth Circuit, the judgment was affirmed (R. 70), the court holding that there was substantial evidence to show that petitioner had assisted in transporting Dewell from Kentucky to California with the intent that she should practice prostitution (R. 68–69).

The evidence adduced by the Government may be summarized as follows:

Stephen Elray Culp testified that he met petitioner and his daughter, Dewell Kathleen Womble,

in Ludington, Michigan, in February 1943; Culp occupied a room in a rooming house operated by petitioner and his daughter (R. 38). In May 1943 Culp, petitioner, and Dewell went to Louisville, Kentucky, where they stayed for about three weeks; petitioner and Culp worked at their trade as boilermakers, while Dewell kept house for them (R. 38–39). The two men became dissatisfied with their jobs, and after some discussion they, with Dewell, started on a trip in Culp's automobile to seek better jobs, the journey culminating in Stockton, California, in July 1943. En route, they stopped at various places looking for employment, but found nothing satisfactory. (R. 38–40.) Upon their arrival in Stockton, petitioner and Culp went to a union hall seeking employment, and the next day Culp left Stockton. On several occasions thereafter he returned to Stockton to see petitioner and Dewell and on one of these visits petitioner told him that Dewell could be located at the New England Rooms. (R. 40; see pp. 5–6, *infra*.) In respect of the expenses of the trip, Culp testified in various ways: "* * * we all paid the expenses, they paid their share and I paid mine. Dewey Womble generally paid for our meals, gasoline and various expenses of our trip" (R. 38–39). "On the matter of the expenses of the journey, Miss Womble paid me independently for her portion of the cost and when we would have meals along

the way the three of us would pool our resources and pay for the meals." "As far as I know the trip expenses were shared between Womble and me." "On some occasions Dewell Kathleen Womble gave me money to cover her portion of the transportation cost; we all had our money together. * * * we all paid our way through." "Both Womble and I worked in Louisville and this money went toward the expenses of the trip. We all went broke or nearly broke together." (R. 41.) Culp also testified that he never heard or observed anything indicating that Dewell was to engage in prostitution, or that the purpose of the trip was other than to find employment (R. 40–41).

The assistant manager of the Hotel Wolf in Stockton, California, testified that from July 8 to July 12, 1943, a Mr. and Mrs. John Robertson of Louisville, Kentucky, occupied a single room at the hotel. The night clerk identified petitioner and Dewell as Mr. and Mrs. Robertson, basing his identification upon his observation of them entering and leaving the hotel during the time they stayed there. (R. 46, 47.) It appeared that after leaving this hotel, petitioner stayed at the Traveler's Hotel in Stockton on several days in September, October, and November 1943 (R. 47–48), while Dewell, using the name Ethel Robertson, lived for a time at the New England Rooms in Stockton (R. 39, 54).

Dewell was arrested under that alias by the Stockton police on August 6, 1943, on a charge of vagrancy based upon practicing prostitution; the arrest resulted from the report of a man that he had contracted a venereal disease after having intercourse with Dewell at the New England Rooms on July 29, 1943 (R. 42–43, 56).

Sally Mason, the operator of a house of prostitution in Isleton, California, testified that in the early part of September 1943, petitioner, using the name Ray, asked her whether she could use a girl; that she told petitioner that she did not need a girl at the time; and that two or three days later Dewell appeared at her place and worked there as a prostitute for two weeks (R. 44). Documentary evidence was introduced from which it appeared that in September 1943 petitioner made several calls from the Traveler's Hotel to Sally Mason's house of prostitution; one of these calls, on September 14, was specifically identified as having been made to a person named Ethel (R. 45, 48, 50–53).[2]

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[2] The police officer who arrested Dewell on August 6, 1943, testified that she was in actual custody from August 6 to September 23, 1943 (R. 56–57). The testimony of Sally Mason that Dewell worked at her place in September 1943 is corroborated by the evidence that the telephone calls made by petitioner to Sally Mason's place occurred on September 12, 14, 15, 16, and 29, 1943 (R. 45, 48, 52–53). It is likely, therefore, that the police officer was mistaken as to the exact period Dewell was in custody.

Tina Avila, who operated another house of prostitution in Isleton, California, testified that for two days in October 1943 Dewell worked at her place, and that when Dewell came to work she was accompanied by a man who "resembled" petitioner (R. 43–44). It appears that petitioner telephoned this place on November 6, 1943 (R. 48, 49, 53).

Petitioner offered no evidence in defense (see R. 55, 57).

DISCUSSION

1. Petitioner contends (Pet. 7–8, 13–18) that there was no evidence from which the trial judge could properly find that he assisted in the transportation of Dewell, since the evidence established solely that the trip was a joint venture, the expenses of which were shared nearly equally between himself, Culp, and Dewell, and that, assuming that he spent "a slightly larger sum" than the others, such proof does not establish aiding in transportation within the meaning of the statute. We think, however, that the trial judge could properly find on the evidence that the trip could not have been made if the three participants had not pooled their resources and that petitioner's contribution covered a substantial part of the expenses; indeed, it is a fair inference that the major portion of the expense of Dewell's transportation was paid by petitioner (*supra*, pp. 4–5). Clearly petitioner "assisted", within

the meaning of the statute, in the transportation of Dewell from Kentucky to California.[3]

2. Petitioner also contends (Pet. 7–8, 18–34; Supp. Pet. 3–6) that there was no evidence from which the trial judge could reasonably find that the journey was undertaken in order that Dewell would engage in prostitution after their arrival in California. The applicable principles are clear. In *Mortensen* v. *United States*, 322 U. S. 369, 374, this Court said that "To constitute a violation of the Act, it is essential that the interstate transportation have for its object or be the means of effecting or facilitating the proscribed activities. * * * An intention that the women or girls shall engage in the conduct outlawed by § 2 must be found to exist before the conclusion of the interstate journey and must be the dominant motive of such interstate movement.[4] * * * Without that necessary intention and motivation,

[3] *Cf. Gebardi* v. *United States*, 287 U. S. 112, 118: "Transportation of a woman or girl whether with or without her consent, or causing or aiding it, or furthering it in any of the specified ways, are the acts punished, when done with a purpose which is immoral within the meaning of the law." And, see *People* v. *Thurman*, 63 Cal. App. 147, 152 (1923): "The words 'assist' and 'aid' are synonymous, and each imports a contribution of effort supplementing the efforts of another."

[4] We assume that this does not mean that where the defendant accompanies the girl on the interstate trip he may not have a legitimate purpose in so far as his own transportation is concerned but a proscribed purpose in respect of her transportation. See *Simon* v. *United States*, 145 F. 2d 345, 346–347 (C. C. A. 4); *Van Pelt* v. *United States*, 240 Fed. 346, 349 (C. C. A. 4).

immoral conduct during or following the journey is insufficient to subject the transporter to the penalties of the Act." While this is so, it also seems clear that the conduct of the parties within a reasonable time, at least, after the transportation has terminated may have sufficient probative value to support a reasonable inference that the trip was undertaken for the inhibited purpose. *United States* v. *Reginelli*, 133 F. 2d 595 (C. C. A. 3), certiorari denied, 318 U. S. 783; *Tedesco* v. *United States*, 118 F. 2d 737, 741-742 (C. C. A. 9); *Grayson* v. *United States*, 107 F. 2d 367, 370 (C. C. A. 8); *Neff* v. *United States*, 105 F. 2d 688, 691 (C. C. A. 8); *Kelly* v. *United States*, 297 Fed. 212, 213 (C. C. A. 9); *Kulp* v. *United States*, 210 Fed. 249, 251 (C. C. A. 3); cf. *Aplin* v. *United States*, 41 F. 2d 495 (C. C. A. 9); *Johnson* v. *United States*, 215 Fed. 679 (C. C. A. 7).

The question here is whether, applying these settled principles, the evidence, with the inferences which may properly be drawn therefrom, is sufficiently substantial in character to permit a finding that prostitution motivated Dewell's transportation. Of course, Culp's testimony, relating to the activities of the three participants prior to and during the course of the journey up to the time they arrived in California (*supra*, pp. 3–4), does not support such a conclusion; he testified that "Before we left Louisville, I did not engage in any discussion, nor did I hear any discussion re-

garding any purpose in taking Miss Womble on the trip nor did I hear it suggested either at that time or en route on the trip that she was to engage in prostitution. I never heard or observed anything that would indicate the purpose of the trip was anything other than to find employment." (R. 40–41.) On the other hand, the evidence as to the activities of petitioner and Dewell after their arrival in California raises an inference, we submit, that, so far as Dewell was concerned, her transportation was for the purpose of having her engage in prostitution. That evidence was that within, apparently, a few days after they reached California, petitioner and Dewell occupied a single room at a hotel at which they registered under an assumed name as man and wife,[5] that within two or three weeks Dewell engaged in sexual relations for which she was shortly thereafter arrested upon a charge of

[5] While the indictment charged not only that Dewell was transported with the intent and purpose that she should practice prostitution but also engage in other immoral practices (R. 2–3), the above is the only evidence in the record that could relate to any immoral purpose other than prostitution.

Petitioner's claim (Pet. 7–8) that the trial court could not determine from the evidence that petitioner and Dewell were the persons who registered at the hotel as man and wife, is untenable. While the night clerk at the hotel testified that his identification at the hotel was "based entirely on seeing them going in and out of the hotel" (R. 47), the evidence also disclosed that the persons who registered as Mr. and Mrs. Robertson were from Louisville, Kentucky (R. 46), and that Dewell thereafter went under the name of Ethel Robertson (R. 54, 56).

vagrancy based upon practicing prostitution, that about two months after her arrival in California petitioner sought to place her in a house of prostitution, and that thereafter she did practice prostitution at that house and at another house (*supra*, pp 5–7).

Two courts have held that the evidence was sufficient to prove the prohibited purpose. If this Court should agree with those holdings, as we do, it would seem that the case may be adequately disposed of by denial of the petition for certiorari. On the other hand, if the Court should be of the view that those holdings are incorrect, and that the issue presented is sufficiently important to warrant certiorari, it is respectfully suggested that, since the record is not voluminous and the issue is narrow, an appropriate disposition would be to grant the writ and reverse the judgment below without additional briefs or argument. Cf. *Oriolo* v. *United States*, No. 727, present term, decided February 26, 1945.

Respectfully submitted.

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